



POLICE DEPARTMENT

December 1, 2008

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Stephen Barounis
Tax Registry No. 939793
42 Precinct
Disciplinary Case No. 84700/08

The above-named member of the Department appeared before me on November 24, 2008 and November 25, 2008, charged with the following:

1. Said Sergeant Stephen Barounis, while assigned to the Patrol Borough Bronx Task Force, on or about and between March 2006, and January 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant Barounis was scheduled to perform duty with the first platoon and improperly worked beyond his scheduled tour, for non-ordered overtime, which resulted in approximately 911 hours of compensatory overtime. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Sergeant Stephen Barounis, while assigned to the Patrol Borough Bronx Task Force, on or about and between March 2006, and January 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant Barounis did improperly adjust his scheduled tour to commence work prior to the start of his scheduled tour, resulting in approximately 463 hours of compensatory overtime. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Sergeant Stephen Barounis, while assigned to the Patrol Borough Bronx Task Force, on or about and between January 2007 and February 2007 through October 2007, having been directed by New York City Police Captain Thomas P. Traynor to discontinue performing non-ordered overtime, unless specifically directed, did fail and neglect to comply with said order and continued to accrue overtime, resulting in approximately 474 hours of compensatory overtime. (*As amended*)

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

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4. Said Sergeant Stephen Barounis, while assigned to the Patrol Borough Bronx Task Force, on or about and between November 2006, and October 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant Barounis failed to properly and accurately complete and maintain Department Records including but not limited to Overtime Slips and Activity Logs.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and the Respondent was represented by Andrew Quinn, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1, 2 and 3; and Guilty of Specification No. 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant John Crisalli and Captain Thomas Traynor as witnesses.

Lieutenant John Crisalli

Crisalli is a 15-year member of the Department currently assigned to the Internal Affairs Bureau (IAB) Special Investigations Unit Group 1. He has been assigned to IAB

for approximately two years and he assigns cases to investigators, gives them steps that are needed to bring cases to a close and also conducts investigations of his own cases.

Crisalli testified that he became involved in an Official Department Investigation of the Respondent where allegations were made that the Respondent was getting excessive overtime. The case was initiated by Bronx Investigations and this investigation commenced with Captain Traynor. Crisalli stated that the investigation "was retaliation against Captain Traynor, and also the retaliation was that this individual had reported the overtime, excessive overtime, of Sergeant Barounis to the Commanding Officer and he had removed him from his spot. That was the retaliation. He conferred to see that there was an ongoing investigation with Bronx Investigations on Sergeant Barounis and that's how the two cases came to be one."

According to Crisalli, once IAB began its investigation they took the entire case from Bronx Investigations with all of the documentation and began to compile a spreadsheet of the overtime performed by the Respondent (DX 1).

Crisalli testified that he did a background check of the Respondent and determined that he was assigned to the Bronx Task Force on the first platoon as a conditions sergeant. The Respondent worked the first platoon which was a 2305 x 0802 tour. Crisalli stated that Bronx Investigations compiled a listing of overtime that was performed by the Respondent and he utilized those dates to compile his spreadsheet. He stated that Bronx Investigations had initially looked at the time frame between March 2006 through December 2007 and added that the commanding officer of the Bronx Task Force during that period was Captain Tracey. Also during that period, the Integrity Control Officer (ICO) was Lieutenant Algarin; Lieutenant Medina at one point replaced

Algarin as the ICO. He further stated that Algarin left the Department on a "pre-leave separation."

The spreadsheet (DX 1) that Crisalli created was compiled from documents given to him by the Bronx Investigations Unit. He stated that a "previous supervisor had compiled a list of the dates of the overtime in question. I utilized those dates along with precinct roll calls, command logs, to compile my spreadsheet." Crisalli explained that the chart was organized in terms of columns and rows. He explained that:

the first column would be the date of the overtime, the second one roll call tour which is the tour that came down printed on the precinct roll call. And when I say came down, which came from I guess the administrative office to the desk. The next column changed tour to see if there were any changes made to the roll call, first platoon roll call. The next column on the 7 to 3 change to see if any changes were made to the day tour roll call. The overtime report tour would be the actual tour that was performed including overtime. Reason would be the reason for the overtime submitted. Overtime is how much overtime was accrued. Number of supervisors would be the number of supervisors available to work on either the second platoon or the previous third platoon. And the last column, again, the second page after the date which is exceptions, typed, hand or none, would be if on the first platoon roll call if a notation came down typed for overtime to be incurred, if it was handwritten on there, or if there was no notation at all.

He further explained that a listing of "no" means "there was no notation on the exceptions page. 'T' stands for it came down typed that a supervisor was needed for coverage, and 'H' was that someone handwrote it."

Crisalli then explained how overtime reports are prepared by members of the service. He stated that the reports require information regarding a member's rank, social security number, command, shield number, name, and squad or chart. It also asks for the time that the member actually worked including the date range and the time that the

member was scheduled to work, again including that date range. The report also asks whether the time worked is going to be for compensation in time or for cash and how much overtime the member is asking for. It also looks for the command or location where the duty was to be performed for the overtime and the actual time that the overtime will be worked. It further asks for the reason for the "lost time or the overtime." There is also a space where the member is required to sign and date the overtime report.

Crisalli further explained that there is a "supervisory certification" which asks how the overtime was earned and whether it was an outside detail or in the member's permanent command. There is also a space on the report for the "commanding officer's approval on the bottom right-hand side. On the bottom of it, it asks for new arrests. That has to be filled out for any new arrests, whether you have to go to court to draw up your arrests and answer questions on the form for unusual delays." Crisalli stated that the first page of the report on the left-hand side has to be filled out by the member requesting the overtime up to the supervising officer's certification. The bottom part on the left-hand side is to be filled out by the desk officer when the member submits the overtime. The overtime report should be submitted at the end of the tour that is performed and handed to the desk officer to be entered into the command log to finish the rest of the captions. He added that the back page should be filled out by the member who is requesting the overtime. The back page encompasses whether any arrests were made, time of the arrest, the charge pertaining to the arrest, vouchers that were prepared and any other offenses that are relevant to the arrest. There is also another section on the report for "any other assignment necessitating overtime" which the member is required to fill out. He further explained that "the bottom portion is to be filled out by the desk officer. If the excessive

reasons for the overtime are explained, it's yes or no, the supervisor would circle yes or no and then approve, recommend approval or disapproval of the overtime."

Crisalli testified that the particular overtime that he focused on for his investigation was "supervisory coverage" overtime, to compile his report. Supervisory coverage is the reason for the overtime being performed and there is a space on the front page of the overtime report to indicate the reason for the overtime. He added that there is also a space on the back of the report that should be filled out if there are any "unusual circumstances" for a member requesting overtime. On the reports that he reviewed regarding the Respondent, the unusual circumstances space was not filled out in any of the Respondent's overtime reports. He further stated that on the Respondent's overtime reports that he reviewed, the person signing the report approving of the overtime was Lieutenant Algarin.

Crisalli also testified that "we looked at the roll calls for the first platoon, again to see if on the tour that Sergeant Barounis worked, to see if there was any change made to that tour. And also on the exceptions page for the first platoon to see if the overtime came down as ordered or as it came down on the roll call for coverage. We also looked at the second platoon to determine how many supervisors were available to work on the second platoon for that day." He further explained that the Respondent was assigned to the first platoon and that his overtime extended to the second platoon and that's the reason why Crisalli looked at the second platoon to see how many supervisors were available to work. He also looked at the second platoon to see if there were any last minute changes to the roll call including "ink changes" meaning if any of the supervisors on the second platoon made last-minute calls to have the day off or went sick for that day.

Crisalli testified that the roll calls were usually prepared the day before unless it's a weekend, which the roll call then would come down on a Friday for the entire weekend through the day tour of the second platoon on Monday. He acknowledged that on the roll calls that he reviewed in preparation for compiling his spreadsheet, there were no changes made for those roll calls. He stated that in those roll calls there were handwritten changes. The handwritten changes were relevant because "if there was a handwritten change to the sergeant's tour on the first platoon, we took that into consideration that there was extra overtime earned whether there was a notation on the roll call or not for the coverage." Crisalli considered handwritten changes as part of his determination that the Respondent worked non-ordered overtime because "if the roll call stated that the sergeant was supposed to work a 2305 by 0802 and then do patrol coverage at 0802, if there was an ink change where he started his tour earlier, he would then short the midnight platoon if he worked 2105 by 0602, he would short midnights by two hours and also getting an extra two hours for the coverage he was supposed to do in the second platoon." Crisalli explained that "shorting the midnights" was where "two supervisors working on a midnight, they would be there until 0802 the end of the tour. If the sergeant works 2105 by 0602, there is therefore no supervision from 0600 to 0800." He further explained that if a roll call change occurs on the second platoon on a Saturday then "there was no one there necessitating a first platoon person to work, we had to look at the day tour roll call, second platoon roll call, to see if there was a reason for that overtime to occur from the first platoon." He further stated that handwritten tour changes were taken into consideration because "there would be supervisors working in the second platoon and another supervisor from the tour wouldn't be needed." He added that "handwritten

change on the second platoon, what I mean by that, if a supervisor was crossed off on the second platoon, there would be no supervisors – if enough of them were crossed off, there would be no supervision on the second platoon.” He acknowledged that this situation would reduce the number of available supervisors on the second platoon thereby justifying overtime.

Crisalli further stated that in compiling his spreadsheet he looked to see if there were typewritten entries on the roll call and included them in his compilation. The reason he included these typewritten entries was if it was typed on the exceptions page that the Respondent “can do coverage on the second platoon, we still counted it if he changed his tour. So if the roll call came down on the first platoon 2305 by 0802 and the exceptions page came down that he can do coverage from 0802, it was counted if he changed his tour to an earlier tour.” The reason for this is because by changing his tour to an earlier tour he was shorting the coverage on the first platoon and he was getting more overtime than was ordered on the roll call. Crisalli then pointed to his spreadsheet (DX 1) to further explain what he meant by the Respondent shorting the tour. He pointed to the April 1, 2006 entry where the Respondent’s scheduled tour was 2305 by 0802. He stated that the Respondent “changes his tour by 1900 by 0402, which means he would technically go home at 0400 in the morning shorting the first platoon of a supervisor for four hours.”

Crisalli stated that in compiling his chart he also looked at Command Log entries. He looked at the logs to see if the Respondent had put down for desk coverage to see if there were any entries in the Command Log notating desk coverage. He explained that there were times that the reason for overtime would either say supervisory coverage,

supervisory coverage/desk coverage, or just say desk coverage. He stated that he then looked at and took into account where the Respondent listed supervisory coverage and desk coverage as part of the dates that he compiled in his chart. He explained that "some of the dates also have overtime where he had supervisory coverage, grand jury, supervisory coverage with DWI operation or supervisory coverage with a fireworks operation. They are on the spreadsheet; however, they were not utilized in the computations because I couldn't make a determination of when those operations ended and supervisory coverage occurred so we did not use those dates but they are on the form."

Crisalli testified that the responsibility of the Respondent as a sergeant with regard to the Command Log was he was supposed to sign in into the Command Log the time he arrived with his name and was required to put down present for duty. If he was to report for desk duty then he was to list the time that he arrived at the desk with his name indicating that he was assuming desk duties. He is also supposed to account for any equipment at the command for example radios and any other information like DWI Breathalyzer, whatever is there. He has to make notations regarding automobiles assigned to the command and whether they are operable or not. If he was assuming desk duty at a precinct, he would have to make reference to any prisoners that they have in the command and any property invoiced at the command including narcotics.

Crisalli testified that during the period of March 2006 and October 2007 there were some Command Logs that were missing. Logs that were missing were from the periods of November 17, 2006 through May 25, 2007 and also July 17, 2007 through August 8, 2007. He stated that he determined that the Command Logs were missing

shortly after he requested additional documents from the Bronx Investigations Unit. He was told at that time that the Command Logs could not be located.

Crisalli further testified that as to the Command Logs that were available to him he found that there were entries where the Respondent's name appeared in the Command Log and the entries indicated that he was conducting roll calls and station house security inspections. After reviewing the logs, however, Crisalli found that there were no specific entries of the Respondent putting himself on desk duty for those entries.

Crisalli stated that there were also instances where the Respondent listed the reason for his overtime as that he worked patrol duties. Where the Respondent listed that he worked patrol coverage, Crisalli reviewed the Respondent's memo book which "covered part of the period on this log. We also retrieved various officers' memo books from the second platoon from the Bronx Task Force and reviewed those Activity Logs as well." The Activity Logs of the Respondent that were reviewed covered the dates from September 26, 2006 through February 27, 2007. Crisalli also indicated that there were a number of memo books that were missing including the Respondent's for which he received a command discipline.

Crisalli stated that the Activity Logs that he reviewed, from the period of September 26, 2006 through February 27, 2007, there were no entries in those logs that detailed the Respondent's duties and responsibilities while on patrol. He explained that "the entries just showed that he was present for duty and that his overtime ended at a certain time."

Crisalli further testified that during the period between March 2006 and January 2007 the Respondent changed his tour from his steady midnight tour of 2305 by 0802

hours. From these changes Crisalli reasoned that if the Respondent changed his tour on the first platoon "the amount of time that he incurred because of that was taken into account whether or not the exceptions page listed him to work the overtime, typed, handwritten or none at all we took it all into account. Because when he changed the tour, again, he was leaving the midnight short a supervisor and getting extra overtime."

Crisalli was then asked by the Court to give him an example on his spreadsheet where the Respondent shorted the platoon. Using the same date as he previously did, that being April 1, 2006, Crisalli testified that "the roll call came down printed tour for the first platoon Sergeant Barounis 2305 by 0802. He changed his tour for 1900 by 0402. His total tour was 1900 by 1235. He put down patrol desk. He received eight hours and thirty-three minutes overtime. Had he worked his 2305 by 0802 until 1235, he would have received four hours and thirty-three minutes overtime. On that one, there was no notation on the exceptions page for that." When asked again as to how did he short the first platoon considering the fact that he was there for the first platoon, Crisalli stated "we are saying there was no notation that he should stay for overtime." But with regard to shorting the tour, he stated, "There is no instance where he shorts the platoon. What I am saying was if he were to leave on time after changing his tour, it would have shorted the platoon. So he would have to stay until at least 8:00 so as to not short the platoon. No, he did not short the first platoon because he stayed on overtime."

When further asked by the Court if there was an instance where he shorted the first platoon by leaving early, Crisalli replied, "No. I was just trying to explain the reasoning for the tour change in the first platoon." Crisalli further explained that as to the typewritten entries in the roll call when the Respondent had adjusted his tour he counted

that as overtime that was "extra overtime earned." Because if he would have "again, like on the same date I was talking about if he worked 2305 by 0802 and stayed for coverage he would have gotten four hours overtime until 12:00. By changing his tour to start 1900 by 0400 he received eight hour and thirty-three minutes."

With regard to the period comprising February 2007 through October 2007, Crisalli stated that he interviewed Captain Traynor, the commanding officer of the Bronx Task Force. He learned from Traynor that the Respondent was authorized to work overtime when needed. He also learned from Captain Traynor that when he arrived at the command in November 2006 he was informed by the ICO, Algarin, that the Respondent was accruing a large amount of overtime. Traynor told Crisalli that he informed the Respondent to stop working the overtime. Based on his conversation with Traynor, Crisalli had to use a different analysis when reviewing the overtime by the Respondent. He explained that "when overtime for supervisory coverage was submitted by the sergeant, anything that came down on the exceptions page for the first platoon that stated it was typed that the sergeant would work the overtime we did not count it unless the sergeant changed his tour to come in earlier, thus getting more overtime than would have been ordered by the roll call. Also, if it came down same time period there was a handwritten change, since there would be no determination who made the handwritten change, that was also counted. Again if there was no notation at all it was also counted."

Crisalli testified that based on his analysis and investigation he substantiated three Departmental charges that formed the basis for the charges in this cases. He stated that based on the first three charges that are charged to the Respondent in this case the total number of accrued compensatory time that the Respondent listed as overtime came to a

total of 1,838 hours. Crisalli was then asked whether he made a determination based on whether the Respondent properly and accurately maintained the available Activity Logs that he was able to review and he replied, "As for the entries that should have been made in the Activity Log, no. When a supervisor is on patrol he is supposed to document any jobs he responds to, priority jobs in progress, any enforcement activity should be documented in the memo book. If he inspects any of his subordinates' Activity Logs which he is required to do every tour, that should also be a notation in the memo book. The memo book I reviewed did not show any of that activity or notations while working his overtime."

Crisalli stated that based on his investigation and based on his chart the first date that he reviewed where he made a determination that the Respondent performed non-ordered overtime was March 2, 2006. Crisalli stated that the Respondent's overtime report for that date under the assignment necessitating overtime section there was no explanation by the Respondent for "unusual delay or circumstances." Crisalli stated that the reason he put for doing the overtime was "supervisory coverage and C.O. conference." The tour he worked on that day was 2305 by 1202 and the total number of overtime received for that tour was four hours of overtime. Based on Crisalli's review of the roll calls for that day, there were a total of four lieutenants and three sergeants assigned to work the second platoon on that day. He stated that the lieutenants were scheduled for day tours and out of the three sergeants two of them were coming in at 0900 and one came in at 0600. He stated that on the exceptions column for that page there were no changes made which means that there was no notation for the Respondent to work an extended tour.

The Court then received the documents pertaining to the month of March 2006 and received them into evidence as Department's Exhibit (DX) 2. Crisalli acknowledged that those were actually the records that he reviewed for the month of March 2006. DX 2 contains roll calls, Command Log pages, and handwritten Command Logs.

Crisalli was then directed to the March 7th entry on his spreadsheet. He stated that the analysis that he did in reviewing the documents in compiling the chart was that "the overtime report, the back page of the overtime report is not filled out and is not signed by a supervisor. Sergeant Barounis worked a 2305 by 0802 tour which came down at roll call. He remained on overtime until 1132 hours. He put down supervisory coverage and administrative work, got three hours and thirty-three minutes in overtime. Day tour roll call shows four supervisors that were working, two of them lieutenants for the day tour." Crisalli stated that while there were four lieutenants on the second platoon there were also two sergeants working 0900 hours and those sergeants were not counted because their tours started at 0900 hours. Crisalli also stated that the exceptions page was reviewed for that date and there was no typed or handwritten notation. There was also no notation at all for the Respondent to work an extended tour. He further stated that "there's no notation in the Command Log to show what the sergeant did on overtime." In summarizing the remaining days of March on the spreadsheet, Crisalli stated that "if it says supervisory coverage, we counted it. If it says anything else other than that, you see the dates DWI Op – March 15th is not charged." That was because it was a DWI operation and therefore Crisalli stated that he did not charge that to the Respondent. March 16, 2006 was also a DWI operation and that was also not charged to the Respondent. Crisalli stated that he did not count March 17, 2006, March 25, 2006,

March 29, 2006, and March 31, 2006. Crisalli stated that where the document listed patrol supervisor as a reason for the overtime he counted that the same as supervisory coverage.

On cross-examination, Crisalli testified that subsequent to his prior testimony he reviewed DX 1A, which he created, and deleted or lined out those dates which he determined was overtime that the Respondent properly put in for or that he just did not count against the Respondent during his investigation. He explained that he could not testify that it was "proper or not." In his report, he essentially struck out the overtime that did not pertain to supervisory coverage or "if it had supervisory coverage and something else alongside of it" He acknowledged that if the notation on the overtime report did state supervisory coverage he would then take the next step to see how many supervisors were working in the next tour and "if there were supervisors on the day tour that was counted against" the Respondent. Crisalli stated that he did not interview any supervisors that were in the second platoon during his investigation because of time constraints. Essentially Crisalli stated that nobody had interviewed supervisors who were working the second platoon and asked whether or not the Respondent was needed to do any type of supervisory coverage on the dates that Crisalli has on his chart. Again, he explained that the supervisors were not interviewed because of time constraints. He further explained that the times that were excluded on his chart were "based on supervisors that were on the roll call for the day tour that he was not needed." When Crisalli was reminded that it was not known what the supervisors were doing on any of those given dates, he replied, "I can only go by what the roll call said they were doing." He acknowledged that the roll call just lists their names, assignment

and the hours they work. With regard to the supervisors' assignment, Crisalli testified that unless there was an exception for their tour, roll call does not indicate whether somebody is going to be in or out of the command during the supervisor's specific tour.

Crisalli, in referring to his report (DX 1), acknowledged that there were no dates crossed off for December 2006. Referring to December 1, 2006, Crisalli was referred to the Respondent's overtime slip and it was pointed out to him that the reason for the lost time was because there was no task force supervisor working, lieutenant or sergeant, all supervisors were assigned to out of borough details and he was asked if he credited or charged the Respondent that overtime for 12 hours. Crisalli responded, "It was charged against Sergeant Barounis." When Crisalli was asked if he made any determination whether or not all of the supervisors that were contained in the roll call were in fact assigned to out of borough details, Crisalli responded, "Again, I don't have the roll calls with this. The chart was compiled when we had all this. They are making copies of the roll calls. The roll call is not in here pertaining to the overtime."

Crisalli testified that as part of computing his analysis he "would compare the roll calls to see if there were supervisors on the second platoon that could work on the second platoon." If there were supervisors that could work on the second platoon then unnecessary overtime was performed by the Respondent. Crisalli further stated that he made the determination that supervisory coverage was the reason for the overtime by reviewing the overtime slips which had the reasons stated on it. When Crisalli was asked if in his experience with the Department whether he ever recalled seeing the term supervisory coverage on overtime slips, he stated, "I may have. I can't recall specifics, but you know, as my time as a desk officer, I probably would have yes." He further

stated that he may have, but was not sure, if he himself submitted an overtime slip with supervisory coverage as the stated reason for the need for overtime. He added that the term "supervisory coverage" is used in the Department as a reason for overtime.

Crisalli was asked to look at DX 1, which is his spreadsheet, under the month of March 2006. It was pointed out to him that he drew lines through the entries for March 15, 16, 17, 25, 29, and 31. He was then asked the reason why he crossed those dates out. He indicated that he was not including them as part of the unauthorized overtime for this case, that his analysis indicated that the Respondent was working either a DWI operations or he was a DWI supervisor, or on the last one being March 31, 2006, he was on patrol. When asked if Crisalli believed that all those were necessary and appropriate periods of overtime, Crisalli replied, "I gave him the benefit of the doubt because I don't know if the DWI ran into overtime or not. So if I couldn't differentiate, I didn't count it. If I couldn't say it was valid, I excluded it."

Crisalli was then asked to look at the folder which contained overtime slips for the date of March 21, 2006. He was then asked what was the reason for the overtime on that date and Crisalli replied, "I can make out supervisory coverage. I couldn't make out the rest of it." When he was asked if he questioned anybody as to what the rest of it said, Crisalli replied, "No, I did not, because again when I was doing the analysis it was October 30th and I had to get it done." When he was further asked if he could see if whether it said "Co-op City blackout," Crisalli replied, "It could say that. I can't really read it I can't understand the handwriting. If that's what you say it says, it looks like it. I can make out the last word probably can be blackout, yes." When asked if it did in fact read blackout in Co-op City and that the Respondent was working would that be a date

that should be excluded from the chart, Crisalli replied, "No, it was not included because there was a notation in red that said not on roll call, which I took to believe that Sergeant Barounis was not on any roll call." He further explained, "First, looking at the overtime and again this is in black and white, there was a notation in red pencil which normally would be someone that reviewed it would make a notation. It says not on RC. I took that to mean that Sergeant Barounis, nothing was on the roll call that would say that he should be staying. So if there was no notation on the roll call, it was included. That would be going back to the exceptions page in the first platoon." When asked if his analysis didn't just include the reason for the lost time but also whether the overtime was based on the exceptions page and the roll call, Crisalli replied, "If the overtime was submitted for supervisory coverage and maybe something else, if I could not ascertain if the other part of the roll call – for example, you said DWI Op. If I could not determine that the DWI Op ran into overtime and then supervisory coverage after, if that could not be determined, it was not counted. There was no notation on the exceptions page of this roll call for the first platoon that the sergeant should do coverage after his tour. So that's why it was included." Crisalli further stated that he had no idea if there was a blackout on that date and therefore did not know if the Respondent worked at Co-op City during the blackout for an overtime period in March of 2006. When Crisalli was further asked if the Respondent did in fact work the Co-op City blackout would that have been authorized and necessary overtime, Crisalli replied, "That, I don't know, but there should have been a notation on the back of the overtime which explains unusual delays or circumstances and signed by the desk officer, which was not. Again, because there was no explanation on the back of when the blackout started, his tour ended at 0800. There was no

explanation of why he stayed other than supervisory coverage and what I could not make out to be Co-op City blackout. The fact that there was no notation on the exceptions page of the roll call that he should do extended tour coverage all of that was taken into account as to whether it was factored against him to have the time added.”

Crisalli was then directed to look at the month of April 2006, specifically April 18, on his chart. He was then asked why he excluded or put a line through the date of April 18 even though according to his chart the Respondent worked 10 to 6 patrol and there were two lieutenants and three sergeants working. Crisalli explained, “Again, because if you look on the back of that page on April 18th ’06, he did work some type of a detail. And again, I could not show where the detail ended and where his patrol coverage began. When I first compiled the chart, it was put on there erroneously and added, so I had to take it out before the final computations.” When he was asked if he relied on notations on the back, he replied, “No, again, he had a detail. He worked a detail that day. I believe it came down on the roll call that he had a detail. I had to double-check the roll call, but I believe that’s why it was taken out.”

Crisalli was then shown an overtime slip for the date of April 18, 2006 reflecting six hours and three minutes worth of overtime for the Respondent. Crisalli read the form and noted that the Respondent gave the reason for his lost time as “patrol coverage 10 to 6.” Crisalli acknowledged that the time slip didn’t mention anything about a detail and further acknowledged that according to the records the Respondent in fact did work a detail. When Crisalli was asked, the fact that the overtime slip did not mention the detail anywhere would that suggest that there were times that the Respondent wrote either desk or patrol when he was in fact working a detail, Crisalli replied, “No, because it would be

notated somewhere just like it was on either roll call that he had a detail. Sometimes he had transit checks and then does coverage.” When it was pointed out that there were times when there were transit checks, when he simply wrote on the overtime sheet “patrol coverage,” Crisalli replied, “No, I believe he wrote transit checks and then submitted a separate overtime patrol coverage, but it was the same date.”

Crisalli was then directed to the overtime slip for the date of May 27, 2006, where the Respondent requested overtime for ten hours and thirty minutes. Crisalli acknowledged that, according to the overtime slip, the Respondent was working a DWI operation from 6 to 2. Crisalli was then asked that according to his testimony of the ten and a half hours worth of overtime is there any adjustment on the sheet that shows that he should be credited with the 6 hours of overtime and he replied, “No, I did not make adjustments for hours in between the overtime. I didn’t have time to do that. So if there was a question that I had regarding the overtime, it was counted against the sergeant. And in this case the question was he does do a 10 to 6 patrol coverage after he does the DWI operations from 6 to 2.” He was also asked that on the instances where there is at least an indication that a portion of the Respondent’s overtime involves a detail the Respondent was not given credit for working those overtime details. Crisalli replied, “If I counted it and the detail did go into the coverage, I did not credit him with that overtime, that is correct. There was enough time to do that.”

Crisalli was then directed to review the folder for June 6, 2006, and he was asked if it indicated that the Respondent was working supervisory coverage on a 6 to 2 for a fireworks operation and Crisalli responded that that was correct. Crisalli acknowledged that the Respondent was not credited with having worked the fireworks detail for that

tour. He further acknowledged that he did not have any idea whether or not the Respondent in fact worked the fireworks operation.

Crisalli was then directed to review the overtime slip for June 14, 2006, and he was asked whether it indicated that the Respondent worked the Yankee Stadium detail and Crisalli replied that it did. When he was asked if it was confirmed whether or not he worked the Yankee Stadium detail, Crisalli replied, "Again, this may have been an error. The chart was done quickly. This probably should not have been counted because it was a detail DWI in Yankee Stadium." Crisalli added that that date should have been struck from his spreadsheet with a line drawn through that date.

Crisalli was asked by the Court to look at June 26, 2006 and asked him could he explain the basis for including this date in his report and Crisalli replied, "This was included because again Sergeant Barounis was RDO (regular day off), and there is no notation on any roll call of why he had RDO overtime on that date. The roll call is not with this specific overtime." He was then asked by the Court, so the reason this overtime was included in his report is because the Respondent did not fully explain it and Crisalli replied, "Correct. There was no explanation on the RDO"

When Crisalli was asked if he agreed that in preparing his analysis that this was not a complete and accurate indication of the number of hours that he and the Department believed that the Respondent unnecessarily worked supervisory coverage, Crisalli replied, "I would agree it's not an accurate – it might not be complete because I didn't have the opportunity or the time for any type of overtime that I included where he had any other detail, subtract out time for the detail and the overtime that should have been approved." Crisalli was then asked that other than looking at the overtime sheets and

looking at the paperwork that's been attached to the Department's exhibits, you weren't able to go back and check with any of the supervisors within the Department to see whether or not the Respondent actually needed to work those days because there was a shortage or lack of coverage, and he replied, "No, I did not have an opportunity to ask those questions." Crisalli acknowledged that he learned from Captain Traynor that a number of supervisors in the Bronx Task Force were either ill or injured during the periods from 2006 and 2007. With regard to the total number of overtime hours that the Respondent worked, Crisalli stated, "According to my chart, you know, prior to any changes that we did today, it was approximately 1,838 hours and that would encompass all three of the charges that I substantiated." Those hours were encompassed from the dates from March 2006 through December 2007.

Crisalli acknowledged that in reviewing all the overtime slips, they were all signed. Crisalli further stated that once these documents are signed they go to the administrative office and then from there they go to payroll. Crisalli admitted that he did not know if any of the overtime slips were rejected by either the commanding officer at the Bronx Task Force or by the New York City Police Department. He added, "If they were rejected, they wouldn't be in his ETRs. So the answer to that would be no." He further stated that he didn't have the time to conduct the type of investigation where he would have checked with the Department to determine whether the Respondent's overtime slips for the years 2006 and 2007 were ever rejected by the Department. He added, however, "I am unaware of any overtime slips that have been rejected by the Department."

On redirect examination, Crisalli was asked if there was a lack of supervisory coverage in the Bronx Task Force due to various illnesses of particular supervisors how would the roll call reflect whether there was a lack of coverage due to illnesses and he replied, "Well, if anyone on a particular platoon was out sick, they wouldn't show up on a roll call. If they did show up on a roll call, they would be lined off."

The Court then instructed Crisalli to focus on DX 1A which is his spreadsheet and asked him why June 11, 2007 for nine hours of overtime was considered overtime that should have been stricken from the chart and he replied, "It was stricken because we could not locate the overtime report since we could not locate it we couldn't include it. That's why it was stricken out." He stated however that when the chart was prepared "we had the overtime report. In the process of making the copies, I could not locate it to be included."

Also on his spreadsheet, the Court asked him why January 3rd was deleted and he replied, "After reviewing it, I believe it was actually on the roll call that Sergeant Barounis was supposed to work the pre-tour coverage. That's why it was taken out."

Crisalli was then asked by the Court to explain the column that appeared on the second page of his spreadsheet where exceptions were typed and the Court inquired as to what that means and Crisalli replied, "That means after I reviewed the first platoon roll call, there is an exceptions page. An exceptions page is anywhere the people are on details, or tour changes, or if they are supposed to do anything else. If there was a notation on the exceptions page for the sergeant to work typed on the roll call, typed, for him to work the coverage there would be a 'T'. If it was handwritten, it would be an 'H'. And if there was no notation at all, it would say 'No' or 'None'." When asked what does

the handwritten notation indicate, he replied, "The handwritten notation from what we saw it just said Sergeant Barounis extended tour overtime." When asked if it was typed what would that indicate, Crisalli replied, "It would say Sergeant Barounis, whether it be pre- or post-tour, with a time next to it. It could just be a notation that they needed someone to stay to cover. If the sergeant's tour ended at 6:00, he needed to stay until 8:00, or whatever time he stayed until. For the most part, we did not count it as typed unless there was something else with it." When asked therefore if it was typed you didn't count it, he replied, "Not necessarily. If it was typed and the sergeant changed his tour to come in earlier, or if on the second platoon a supervisor was available to cover." Crisalli acknowledged that the meaning given to the fact that it was typed would depend on the circumstances.

Captain Thomas Traynor

Traynor is a 17-year member of the Department currently assigned to the 10 Precinct. He stated that it was in November of 2006 that he was assigned as the Bronx Task Force commanding officer. He stated that his duties as captain and commanding officer of the Bronx Task Force consisted "basically in charge of the Bronx Task Force mobilizations . . . I would respond . . . on the scene of any major incident, things of that nature." He further explained that "basically, in the Bronx Task Force there is an impact task force and there is a regular task force. And each week, weekly it would change as per the borough commanding officer. He would assign them different precincts throughout the Bronx." He added that the task force would rotate throughout the Bronx and that their response parameters were "what the chief would do is he would look at the

crime figures for the previous week. If a certain precinct was up in crime, he would assign the impact task force or regular task force of that precinct for the week to help them with enforcement like robberies, major crimes.” With regard to the task force organizational structure Traynor stated that he was in charge, and was the commanding officer. Normally in a precinct command, there was an executive officer but he was not assigned one. He had lieutenants under him which consisted of his administrative lieutenant; his platoon commanders; and integrity control officer, a lieutenant; and then he had his sergeants in the squad. In all, he had six lieutenants and about 14 sergeants. He stated that his ICO at the time was Lieutenant Algarin and he was his administrative lieutenant.

When Traynor was first assigned to the Bronx Task Force in November of 2006 he sat down with Algarin and basically explained what his duties and responsibilities were and what he expected of him as ICO. In essence, Traynor stated that the ICO’s duties were that he “would sign the overtime slips and was in charge of the integrity monitoring file.” The monitoring file contained places throughout the precinct that were off-limits to cops, that is places that were corruption-prone locations. He stated that’s basically where cops tend to coop on a late tour or any tour for that matter. Traynor testified that he told Algarin that he expected him to continue with his ICO duties, meaning to “sign the overtime slips, to continue doing that, integrity monitoring file to keep an eye on that. Make sure the supervisors -- because every tour supervisors have to make a certain amount of visits to these locations, that they are done properly, that they are put in the book.”

Traynor testified that at one point Algarin informed him that the Respondent received a lot of overtime prior to Traynor's arrival at the task force. He stated that he and Algarin sat down early in 2007 and Algarin brought up the amount of hours that the Respondent had received in January 2007 and it was over 200 hours. Traynor said that that was "a lot" of overtime. He stated that at that time he brought the Respondent into his office and basically told him that "his overtime was done. No more overtime."

When Traynor was asked if he reviewed the Respondent's overtime slips he stated, "I didn't review them. Lieutenant Algarin actually signed them. On that aspect, it was my fault that I didn't review them, but I charged Lieutenant Algarin with reviewing the slips. He was reviewing the slips prior to my arrival, so I said just continue that. I also just said keep an eye on Steve (the Respondent) and his overtime. If anything jumps off the page or anything that raises eyebrows, please bring it to my attention." He stated that thereafter Algarin did not bring any overtime issues to his attention nor did anyone else bring overtime issues to his attention.

Traynor testified that on a periodic basis, usually on a payweek, he would sit down with his supervisors and speak with them concerning the command. He also sat down with Algarin and discussed issues with him. Traynor further testified that at no time during these meetings did Algarin raise any issues with regard to the Respondent's overtime after Traynor had ordered him to cease performing overtime.

With regard to not reviewing the Respondent's overtime slips, Traynor again stated that "it was a fault on my part." According to Traynor, he had instructed Algarin to review and sign the overtime slips and that he should have reviewed them.

Traynor stated that at one point the Respondent had asked him if he could resume doing overtime and Traynor told him, "No, not yet." He stated that it was not until June or July of 2007 that he actually told the Respondent that he could resume doing overtime again. He stated that he told the Respondent that "you are going to work for me now, meaning I don't want him to be there if he really didn't need to be. If I had supervisory coverage, I didn't need him there. If his guys – he's assigned as a conditions sergeant. I said to him if his guys are making collars, I have no problem with him supervising the arrest for like drug collars if it was a sign and seal. You always want a supervisor there. I said no problem if he is doing that. Also I told him the Bronx Task Force building was condemned a couple of times, so I did tell Sergeant Barounis that he could start helping out the lieutenant, Lieutenant Batignani, with the cleaning of the station house."

During the time that the Respondent was not permitted to do overtime, Traynor stated that he informed Lieutenant Dolan who filled in as his administrative lieutenant that "if we need supervisory coverage because the administrative lieutenant is in touch with roll call and what coverage is needed where we need people. And I said, you know, if we need coverage on any particular tour, whether it be late tour, midnight, day tour, RDO, whatever it was, that Sergeant Barounis could start doing some overtime." After Traynor permitted the Respondent to resume overtime he still did not personally review his overtime sheets. He stated that he told Algarin to keep an eye on the overtime and that Algarin should just keep an eye on it, that "it doesn't get crazy." Traynor further explained that the specific overtime that the Respondent was allowed to do had to do with cleaning up the station house. Traynor stated that he "said if you see an overtime slip for cleaning the station house, I authorized that. If we needed coverage, just to make sure

that the overtime he was submitting that there was no supervisor, I had no supervisor working that particular tour, and if it was Sergeant Barounis, that was okay. And also, at the task force there are a couple of hours where there is no supervisor at 7:00 at night or 7:30 where the midnights end until 9:00 when the day tour comes in. And I also told Sergeant Barounis and the other supervisors that if he wants to stay for coverage, to make sure the supervisor there supervising the out tour people coming in to make Command Log entries, I said that wasn't a problem either." Traynor added that gap coverage or covering the gap between tours "basically just happens on the latter part of the late tour and the early part of the day tour. In the task force, the tours are 0930 by 1805 for the day tour. The 4 to 12s are 1730 by 0205, and the midnight is a regular midnight which is 2315 by 0750. So there is an hour or two where there might be no supervisors there." He stated that the overtime that he authorized the Respondent to cover with regard to the lapse in coverage was just until the supervisor came in for the day tour. He wanted to make sure that the supervisor was changed and ready to go to work and reported to the desk before the Respondent was allowed to end his tour.

Traynor reiterated that after the Respondent was allowed to resume overtime he gave the responsibility of monitoring his overtime to Algarin. Traynor stated, "I told him I specifically didn't look at it personally, which I should have. But I told Lieutenant Algarin, who was my integrity control officer, to look at all the overtime slips, cash and time, and I instructed Lieutenant Algarin to review the records, look at them, and if anything jumps off the page, to bring it to my attention."

Traynor acknowledged that as far as he was concerned the Respondent was following his orders with regard to overtime because no one brought to his attention that his overtime was being excessive again.

On cross-examination, Traynor reiterated that in January or February of 2007, Algarin approached him and told him that the Respondent was working too much overtime. Traynor acknowledged that there is no rule that he is aware of in the NYPD that limits the amount of overtime for time as opposed to overtime for cash that anybody is allowed to accrue in any given month. He further acknowledged that there is no written directive or order saying that a sergeant cannot work over a threshold or ceiling amount in any given month or given time period as long as it is for time. Traynor further acknowledged that when Algarin approached him, he never suggested that the Respondent was not actually working the overtime and putting in slips; rather, he told him that he was working the time but he was just working too much time. Traynor stated that the amount of overtime that the Respondent worked was 200 hours for the month of January. After Algarin told him about the Respondent's overtime, Traynor told Algarin to "keep an eye on him."

Traynor testified that when he first came to the command in November 2006 he did not know what each individual in the precinct was doing because he was not able to sit down with Captain Tracey and discuss what was going on in the command because of the condition or illness of Tracey. He stated that usually when a new commanding officer is assigned to a command he usually will sit down with the existing commanding officer and have sort of a transition phase where they will discuss what's going on in the

command. Traynor added that he was not able to ascertain from Tracey what his rules were with regard to the Respondent working overtime.

Traynor reiterated that once he learned of the 200 hours overtime that the Respondent had worked, he told the Respondent to come to his office. He stated that basically he told the Respondent that he is not to do anymore overtime. He stated that he had told him that he had gotten a lot of overtime in the prior month of January and he "said he was pretty much done with his overtime until further notice." By further notice he meant until he got back to him or until he hears from Traynor that he can start doing overtime again. Traynor testified that it was sometime in the middle of June or July of 2007 that he told the Respondent that he could start doing overtime again. Traynor explained that while he told the Respondent he could resume overtime he prefaced it with that the Respondent was "going to work for me. When I need coverage, you know, if I have other supervisors there, I don't need him staying past his tour if I have other supervisors there. Again, if his guys make a collar, a drug collar where you want to a supervisor there to sign and seal the paperwork, I have no problem with that. Or there is a lapse in the tours where I don't have a supervisor, again, I have no problem with that." Traynor acknowledged that while he was authorizing the overtime he was also allowing the sergeant the responsibility of determining when it was warranted. He further acknowledged that the Respondent did not have to come to him on each occasion where he was going to work overtime to seek permission or request clearance for it, explaining that "he knew the parameters, meaning, again, as I stated before, if I don't have a supervisor where again there is no supervisor working to sign in the out tour people, if his guys are making arrests where I need a supervisor there, I think he understood when he

could do it. So if there wasn't a supervisor there and he wanted to do it and he was the only one who wanted to do it versus the other sergeants and lieutenants, I didn't have a problem with it as long as somebody was there." Traynor further acknowledged that not only did the Respondent not have to clear each and every overtime with him, he also did not have to go through a lieutenant either for clearance. When Traynor was asked if it could have been in May of 2007 when he authorized the Respondent to resume working overtime Traynor replied, "Honestly, I know it was the middle of '07. I can't give you an exact date. I thought it to be June or July. That's my recollection, but I am not – I can't sit here with certainty and say exactly what month it was." Traynor further acknowledged that after permitting the Respondent to resume overtime he had not seen any of the overtime slips at that point.

Traynor acknowledged that it was his understanding that all of the overtime that the Respondent had accrued had been approved of by the ICO, that being Algarin. He further acknowledged that neither Algarin nor anyone else at the command told him that the Respondent was putting in for overtime that was not approved. Traynor further acknowledged that not only did he not monitor the Respondent's overtime he did not monitor the overtime of any individual officer within his command. He had assigned Algarin to monitor the overtime of all members of the Bronx Task Force, with the understanding that Algarin would report any officer who was accruing too much overtime. Traynor further acknowledged that subsequent to the point in 2007 where he told the Respondent that he could resume accruing overtime, Algarin never came back to him and told him that the Respondent was accruing too much overtime.

Traynor further acknowledged that Algarin never made him aware of or gave him reason to believe that there were any problems with the overtime usage by any member of the Department after that time in 2007. Traynor testified that it was his belief that the Respondent as a conditions sergeant began his tour at 2200 hours and worked until 0650 hours. He was adamant that "it wasn't 2305 because [that's] a straight late tour. He was coming in a couple of hours before that. Again, I believe it to be 2200. Could have been 2100, yes." Traynor acknowledged that the Respondent came in at that hour because as a conditions sergeant there were certain administrative responsibilities that he had to attend to before they went out to the streets. Traynor further acknowledged that as the commanding officer of the Bronx Task Force he generally did not work late at night.

Traynor further testified that when he first arrived at the command he had very bad luck with respect to the health of his supervisors. He stated that he lost a number of lieutenants and sergeants for various reasons: he lost Lieutenant McGuire to cancer, he lost Lieutenant Batignani for the month of January 2007 to an injury; he lost Lieutenant Dolan for up to five months for a period of time, Sergeant McElroy retired, Sergeant Diaz transferred to the 42 Precinct, and Sergeant Martinez was lost to high blood pressure problems. As a result of the loss of those supervisors, Traynor acknowledged that it left him with a void in the supervisory capacity within the unit.

Traynor stated that the Bronx Task Force is broken down into two task forces. That basically meant that "you have a lieutenant and two sergeants on most days" available for supervision. Traynor acknowledged that in the event that one of those sergeants is not present it would mean that someone would not be available to go out on patrol with the regular task force. Traynor further stated that "there are also times if we

don't have coverage we would ask the adjoining precinct, which is the 44 Precinct, could they cover. So in essence, we would run the task force with one supervisor. He can just do the desk duties, all the entries in the Command Log, then he can go out on patrol, and then you can just have the 44 sergeant maybe just come over or the lieutenant if he was working to pay a visit."

Traynor acknowledged that when he first arrived at the task force there was the existing problem that the command lacked the minimum number of supervisors to supervise the command and oversee the number of cops assigned. Traynor further acknowledged that the lack of supervisors was the reason why he authorized the sergeants and lieutenants, that when the need arose for supervisory coverage that they could stay over and work the overtime to make up for that shortfall. He also acknowledged that because the need for supervisors was such a common problem that when a supervisor would work overtime to alleviate the situation they did not have to go to Traynor on each and every occasion to seek authorization. When Traynor was asked if any of the other sergeants while he was the commander of the task force between November 2006 and December 2007 accrued a substantial amount of overtime, Traynor replied, "Lieutenant Algarin was in charge of that responsibility." While Traynor became aware that the Respondent was working a lot of overtime between November 2006 to December 2007 he nevertheless characterized the Respondent's work as "I guess to just put it simply, he got the job done."

Traynor testified that there is typically a lack of supervision whenever the late tour ended. The late tour ended at 0750, it would be 0750 to 0905 or "whenever the day tour starts." He acknowledged that if there was no late tour sergeant working it would be

the conditions sergeant who would be the only supervisor in the command and it would be his responsibility to stay on until the day tour supervisor came on. Traynor acknowledged that there were occasions during 2007 when he entered the command during regular daytime hours and observed the Respondent working at the desk. While he could not give an exact number of times he saw him he was aware during that period that there were occasions when the Respondent was working overtime because he was at the desk during the day. At those times when he observed the Respondent at the desk, he did not challenge him or question him as to why he was present at the desk because that was one of those occasions where coverage was needed.

Traynor testified that based on his experience in the Police Department he had become very familiar with overtime slips and how they were filled out. He acknowledged that an overtime slip has a front and a back and the front is completed by the officer who is requesting the overtime and then is signed by a supervisor. By supervisor Traynor indicated that would be in the rank of sergeant or above and the overtime slip is signed by either the XO of the command or the ICO. Traynor stated that "the ICO or the XO does sign the overtime slips on the back." Traynor further explained that "on the back of the small overtime slip there is just a lot of boxes I believe for codes for the timekeeper, and it has a spot for the timekeeper themselves and the CO it says or his designee. And on the long overtime slip, the 8 ½ by 10 piece of paper, on the back of that one there's a spot there that more so if you make an arrest where you fill out the arrest data." Traynor further explained that there are "two slips . . . there is a smaller slip . . . and there is an 8 ½ by 10 is the letter-sized, I believe 8 ½ by 10, and on the front is pretty much the same thing, filling out the tour you work, the time, the date. There is also

a spot there for the Command Log entry page number, the supervisor signing it, and on the back it would have if you made an arrest you put down the defendant's name. It's more for the ICO to track the overtime." Traynor indicated that if a supervisor was just doing supervisory coverage overseeing patrol or the task force, that supervisor would not normally fill out the back of the overtime slip, "it can just be put on the front supervisory coverage." Traynor acknowledged that "supervisory coverage" is a common way for supervisors to designate that they worked overtime by simply saying supervisory coverage.

Traynor was shown DX 12 which was overtime reports dated January 3, 2007. He was then asked if when a supervisor submits an overtime report for supervisory coverage is the back of the form typically filled out and he replied, "No, not that I can honestly say. I never really looked at one" Traynor did acknowledge, however, that in all the overtime slips that he reviewed and where he authorized supervisors' overtime he has never seen the back of the overtime report completed in any manner.

Traynor testified that the Bronx Task Force is housed within the building of the old 44 Precinct. He stated that it was his understanding that the building was condemned by the City of New York and acknowledged that basically the basement of the building was essentially uninhabitable and appears to be rat-infested conditions there. Traynor noted that he took on the responsibility of making the building more inhabitable and healthier for the people who were working there. As such, in 2007 he authorized a number of supervisors and officers who were willing to volunteer to tackle the problem of cleaning up the basement. He acknowledged that a number of supervisors did in fact volunteer to make the effort to clean up the basement and one of those supervisors was

the Respondent. Traynor acknowledged that the period that the Respondent volunteered to work in the basement was the period after he had a conversation with the Respondent, during January, February 2007 where he told him to stop doing overtime until further notice. Traynor acknowledged that the City donated two 30-yard dumpsters just to haul away the garbage that was contained in the basement. The work was done by the officers who volunteered from the Bronx Task Force, and it took a couple of months to complete the task. Traynor also testified that the surrounding area of the command also needed work to clear up the conditions there. For example, the parking lot had overgrown trees and brush blocking the areas preventing the cars to be parked there, and there was also a fence that faced the highway that had been knocked down by cars crashing into it. Traynor acknowledged that in an effort to make the task force building more conducive to professional police work he authorized volunteers on an overtime basis to clear the parking lot and restore the fence.

Traynor acknowledged that the Respondent was one of those individuals who volunteered to perform that work and did in fact perform that work during the period starting in the Spring of 2007 for work on the fence and the parking lot and the cleanup of the basement was done in the summertime of 2007.

Traynor acknowledged that in addition to the Respondent and other supervisors being authorized to perform supervisory coverage when other supervisors weren't present, there were also details that they were authorized to cover including details in the area of Yankee Stadium, and also where Traynor "had just instructed Lieutenant Batignani, Sergeant Barounis, the late tour supervisors, that the guys who were panhandling on the Deegan, it was unsafe for them to be panhandling with traffic, plus

other members of the Department had seen them on there who didn't like them on the Deegan there panhandling, so I instructed the officers to arrest them or have them sent to homeless shelters or wherever was needed to help them." Traynor acknowledged that this task was done by either members on regular tour or if necessary on an overtime basis to remedy the problem." Traynor further acknowledged that the Respondent was actively involved in the effort to rid the Deegan of the panhandlers in that area.

He further acknowledged that the overtime that the Respondent performed on the Deegan was within the parameters of his instructions as to when he could go back and start doing overtime again.

Traynor testified that roll calls are generated within the Bronx Task Force and that at times the roll call needs to be changed. Traynor stated that "actually, with the roll call there is also a roll call adjustment sheet. So if somebody is on, say, the midnight tour and they have to go to the range or they have court, they would just put on the midnight roll call for first platoon, which is the late tour, for the second platoon, and it would be next to it range, court, or whatever the case is." Those changes would be handwritten in pen. Traynor further stated that if the member came in earlier for his tour, "if your tour, if you wanted to start it earlier, you can just make an adjustment on the roll call itself, then just put a notation again on the roll call adjustment, using a pen." He indicated that you would "line it out" and put the correct tour on the roll call. Traynor acknowledged that it is a very common practice, not only in the Bronx Task Force but in the NYPD in general. When asked if a member would need permission from either the CO or the XO or the ICO to make any of these changes, Traynor replied, "You can't just do it a voluntary basis because you want to change your tour, you don't feel like doing a midnight. You

need someone's authorization. You know, if there is something going on, whether it be personal, job-related, or whatever, you know, you would ask someone can I do a later tour. If you're going to do a later one or an earlier one, to adjust the tour for that day. It's not common practice that people come and go as they please."

The Court then asked Traynor a series of questions pertaining to the documents used for overtime. The first set of documents shown to Traynor was on the date of January 3, 2007. Traynor was directed to the back of the page and he was asked if he knew what the form was. Traynor indicated that he did and stated "the employees with the exceptions are if they are not assigned – some like, there are officers here that have transit checks. Some have a tour of when they have to go to, like for instance, Police Officer Alamo has AAB which is for court cases for traffic summonses, and it gives a time when he has to attend traffic court." When asked what is "an exception" he stated "just they are not performing a regular tour within the precinct. They are doing something else." Then asked if the Respondent is listed on that form Traynor replied that he was and that "it says ordered overtime, 19 by 2305, I believe. Pre-tour overtime supervisory coverage." When asked who would have prepared this form or how it was prepared, Traynor replied, "This was actually the administrative lieutenant, if we needed coverage, we go to the roll call and instruct the PAA that Sergeant Barounis is doing overtime tonight. Most times it's done prior to the overtime being performed even. Before the tour is even performed."

Traynor was then shown a folder for February 2007 (DX 13). Traynor testified that the dates involved in this package were January 31, 2007 to February 1, 2007 and that 13 hours of overtime were performed under these documents. When asked whether

the overtime performed was appropriate or inappropriate overtime, Traynor replied, "By just looking at the overtime slip and the roll call, because the roll call is for February 1, '07, the overtime slip is also for February 1, and it's written down here the reason for lost time is no sergeant on patrol on the 10 to 6. Just looking at this roll call, I actually have one, two, three, four sergeants working that tour, the second platoon, which is 0930 by 1805, which is almost the same as writing a 10 to 6." The conclusion that Traynor came to was that "by writing no sergeant on patrol, by looking at the roll call, there were plenty of sergeants working that tour . . . I am only looking at the roll call for the second platoon, which is the 10 to 6, or again, the 0930, and the reason for the lost time it says no sergeant on patrol for the 10 to 6. And looking at the roll call for the second platoon, which is the 10 to 6, there are numerous supervisors working for that tour."

Traynor was then handed a packet with documents dated February 1, 2007 to February 2, 2007 (DX 13). When asked if the overtime was appropriate or inappropriate for that day, Traynor replied, "In the middle of the package here, there is a roll call for the second platoon for February 2. And the overtime slip says supervisory coverage 10 to 6 desk. And just looking at the roll call for that day, and again, I have three sergeants working that tour on the 10 to 6, which is the second platoon." When asked if supervisory coverage was a valid reason given the information on the roll call Traynor replied, "Given the roll call and looking with all the supervisors working, no."

Traynor was handed another packet for the dates May 3, 2007 and May 4, 2007 (DX 16). He was again asked by the Court whether the overtime was appropriate and he stated, "Again, looking at this overtime, the overtime slip says supervisory coverage, no 10 to 6 supervisor. And looking at the roll call for that day, again, I have two sergeants

working and lieutenant working on that day. I would say that supervisory coverage is – I have supervisors working that day performing as supervisors.”

He was then handed a packet for the dates June 4 and June 5, 2007 (DX 17).

Traynor stated that on that day there was 35 minutes of overtime performed. When asked if those 35 minutes were justified Traynor replied, “Well, just from looking at the overtime report where you fill out time actually worked is 6/4 at 2030 hours to 6/5 2105. And looking at the Command Log there is a copy of a Command Log page here, and Sergeant Barounis signed in for duty at 2045.” Traynor further testified that the Respondent “has on the overtime slip 2030 that he started his tour, but when you look at the Command Log page where it’s signed in at 2045. Fifteen minutes there.”

Traynor was handed a packet under the date of July 6, 2007 (DX 18). After reviewing the document, Traynor stated “It says time actually worked is 2050, and then he signed in the Command Log at 2055 hours.” When asked what was the reason listed for the overtime Traynor replied, “I think it says supervisory. I am not a hundred percent sure.” When he was further asked if there was any indication of a lack of supervision during the tour involved Traynor replied, “Again, the supervisory coverage, and on the second platoon for that date he was working the midnight which is the scheduled tour, and then on the day tour I have supervisors working that date during the day tour.” The total amount of overtime that the Respondent put in that day was six hours and 45 minutes.

On re-cross examination, Traynor testified that in two different areas of the Bronx Task Force, that being the task force and impact, he stated that with regard to supervision that he “always had an impact supervisor working. It was actually the regular task force

where I had problems, and there were numerous times when we did use the impact supervisor to cover the task force” Traynor further stated that if one of the sergeants assigned to the task force did not show up for work he did not need to authorize overtime because he had two supervisors working in another area of the task force and could have one of those supervisors “come downstairs and cover the regular task force” so he did not necessarily need to have a supervisor on overtime. He acknowledged, however, that if a supervisor was willing to work the overtime that would leave the two impact sergeants to handle the impact units. But he added that “there was never a problem where the impact would cover the regular task force or vice versa.” Traynor did expect, however, that if there were no task force sergeants reporting for duty that an impact sergeant would have to cover the task force. He said that procedure or formality was never in a written communication or directive but “it was just understood.” He added that “so if there was only one supervisor working and supervisor Barounis stayed on overtime, that was understood that that was okay. That would have been okay” Traynor further explained “but again, my supervisors understood that if I had supervisors upstairs, I didn’t need anybody staying to cover downstairs, especially if I had three or four people working upstairs.”

Traynor stated that he had an opportunity to review overtime reports submitted by the Respondent for the period of November 2006 through December 2007 which was the period of time which Traynor was the commanding officer of the Bronx Task Force. He acknowledged that he looked at each one of the overtime requests for the overtime forms that were submitted by the Respondent.

Traynor then stated that with regard to the process that gets followed before overtime is approved: "If they put in for overtime, basically what happens is if they perform overtime, they fill out the slip, they give it to the desk officer or they can do it themselves, they have another supervisor sign it, the bottom of it, and then they make a Command Log entry in the Command Log with the page number and the time. Then it goes to the timekeeper. I believe it goes to the timekeeper first, and then after the timekeeper submits it, or it goes to the ICO. I don't know if the ICO first or the timekeeper, but then it goes upstairs, the timekeeper looks at it, logs it in, they sign it, then maybe to the ICO and then the ICO signs it and they keep track of it." From there the overtime slips are submitted to employee time records and from there it is sent down to payroll.

Traynor testified that the documents that he previously reviewed containing overtime slips from the Respondent, it was his belief that they were signed by another supervisor be it the desk officer or the desk sergeant or someone else as required. He further believed that to be processed those overtime slips had to be signed by the timekeeper at the Bronx Task Force. They then also had to be signed by supervisors and were ultimately approved. Traynor then acknowledged that each one of the time slips submitted by the Respondent during the period that he previously reviewed during testimony were all approved by superior officers within the New York City Police Department. According to Traynor, none of those time slips were kicked back or rejected for any reason nor did Traynor receive any type of notification from anybody at Headquarters indicating that there were any problems or inaccuracies with the time slips that were being submitted on behalf of the Respondent.

In Traynor's further review of the documents that he reviewed during his testimony, he did not uncover any period of time when the Respondent submitted overtime that he in fact was not working at the Bronx Task Force. Traynor indicated that his review of the records did not indicate or uncover any type of evidence to suggest that the Respondent was in fact not doing the work that he was claiming overtime for. Traynor acknowledged that it was his belief and understanding that the Respondent actually worked the hours that he claimed on those overtime slips. Nor had anybody reported to him in any manner whatsoever that the Respondent did not in fact work the hours that he claimed he was working. He further acknowledged that it is his understanding that the Respondent actually worked all the overtime that he requested or that he put in for from November 2006 through December 2007. When Traynor was asked when the Respondent was working a supervisory coverage tour when other supervisors were working, would it have been the ICO's responsibility to tell the Respondent not to work that overtime tour, Traynor replied, "Well, it would have been the ICO again when I told him to look at the overtime. If there was sufficient coverage, it would have been him. Either he could have told him or he could have come to me and I could have told him, 'listen, I don't need you here because I have enough supervisors working.'" Traynor further indicated that between the period of November 2006 and December 2007 at no time did anybody come to him and report that the Respondent was working a supervisor's shift when there were already enough supervisors present at the Bronx Task Force. That would have included Algarin, who was the ICO at the Bronx Task Force at that time, and also included other supervisors who were working either in the impact unit or within the task force. Traynor indicated that had somebody reported

that information to him, that being that the Respondent was working unnecessary overtime, Traynor would have instructed the Respondent not to work that overtime shift. Traynor further acknowledged that when he told the Respondent to stop working overtime until further notice it was his understanding that, as far as he knew, the Respondent complied with that order.

On redirect examination, Traynor was asked if it was proper for any supervisor to authorize the overtime if there was adequate supervisory coverage Traynor replied, "No. If there is enough coverage, you don't need to add on any more supervisors to gain overtime or incur overtime if you have enough coverage."

When asked by the Court if there were other officers there you could envision those circumstances where another officer might be necessary Traynor replied, "In the Bronx Task Force or any command, if there is enough coverage meaning they were all working within the command, you don't need to add other supervisors to help out. Especially if you have, you know, three or four working. If they have, your Honor, just like transit checks or something else going on during the day or other things going on where they might be leaving for the day like then they come to work and they have to get somewhere else, like to Manhattan or another borough and you know that ahead of time, yes you would ask another sergeant maybe to stay to cover." Traynor further stated that looking at the documents that he previously reviewed during his testimony he concluded that "there was enough coverage there." Traynor was further asked by the Court during the period that Algarin was the ICO did he have the responsibility to check on the issues previously stated and Traynor replied, "Yes he did." Traynor further stated that Algarin advised him that there was a lot of overtime by the Respondent in January of 2007 and

that was when he brought the Respondent and sat him down to talk to him. When asked if when he sat the Respondent down in January or early February did he order him not to do anymore overtime Traynor replied, "In my terms, it would be an order. I am telling my ICO to keep an eye on Sergeant Barounis and his overtime. If there is anything that jumps off the page were my exact words, bring it to my attention and we will address it." Traynor stated that that was directed at Algarin. When asked what did he direct the Respondent to do, Traynor replied, "I basically said no more overtime. You are done with overtime for now until further notice." When Traynor was asked if when he told the Respondent no more overtime if he meant absolutely no overtime or did he mean he could do some overtime but had to be carefully monitored, Traynor replied, "I mean, if I needed it, but I specifically said no overtime That was my direction. No overtime." Traynor reiterated that he believed that the Respondent obeyed his order "because no one brought it to my attention."

Traynor was handed DX 1 and was asked to focus on February 2007. He was asked to look at entry number 5 where it stated that the Respondent had two hours of overtime regarding an arrest and it was also crossed out on the report. When asked if that overtime would have been authorized, Traynor replied, "That would have been authorized." When Traynor was asked by the Court to look at entry number 8, the five hour transit check, Traynor replied, "Yes, that would have been authorized also." When then asked that his directive to the Respondent did not mean absolutely no overtime, Traynor replied, "Basically, if it was needed meaning like if his guys made an arrest, or if it was transit overtime where we needed a supervisor to send to transit checks, like that

was okay. It was more so that I don't need a supervisor if I have a supervisor covering my building or patrol."

Traynor was then directed to look at item number 10 on the form and Traynor acknowledged that the Respondent came in on his day off for overtime and that overtime would have been authorized. Traynor was then directed to examine DX 13 which encompassed February 1 and February 2, 2007. Traynor was then asked if he could make a determination regarding those dates and Traynor replied, "On this date, it's February 2nd of '07 and it stated for supervisory coverage 10 to 6 desk, and looking at the roll call there is sufficient coverage on that date." Traynor acknowledged that that particular overtime would be inappropriate overtime. Traynor was then asked again to look at DX 1A and to turn to the page that indicates March of 2007. He was then asked to look at the first item on the date of March 14th which comprised IDTU training and Traynor indicated that that overtime would have been "okay." When asked if the second item, that being park detail, would have been appropriate overtime, Traynor replied, "Yes," which would have been overtime consisting of nine hours and thirteen minutes. When Traynor was asked to review item number 4, Queens detail, and asked if that would have been authorized overtime, Traynor replied, "Yes." When he was asked to look at item number 5, which was grand jury court for eleven hours overtime, and was asked if that was authorized, Traynor replied, "That's correct."

Traynor was then given DX 14. Traynor stated, "Looking at this roll call, if I am reading it correct, I need the 15th roll call because he put down 6 to 2 coverage on the 15th" and therefore there was no way for him to ascertain whether this overtime was appropriate.

Traynor indicated that for the period prior to him coming into the command, he did not know what the procedures were that they had regarding overtime and what rules they had in place. He stated that every commanding officer has a different set of procedures and rules.

Traynor was then asked by the Court about his previous testimony where he stated in effect that this situation was his fault and that the Respondent shouldn't have done it and was asked how would he characterize the misconduct here. Traynor replied, "Well, when there is enough supervisors working, he just actually added on some overtime to incur extra overtime It wasn't necessary. It's not cash." When he was asked how does taking compensatory time impact on the Department or the command, Traynor replied, "It's not until you retire within the Department. They look at it like I guess it's not a big deal because it doesn't affect you now until you put your papers in to retire then you are on the patrol for x amount of time."

The Respondent's Case

The Respondent testified in his own behalf.

Respondent Sergeant Stephen Barounis

The Respondent, a 23-year member of the Department, is currently assigned to the 42 Precinct. He was promoted to sergeant in 1997 or 1998. In 1999, he was assigned as the conditions supervisor in the Bronx Task Force (BXTF). He explained that BXTF provides support for all of the precincts in the borough. He testified that, depending on injuries, he supervised between two and ten police officers.

The Respondent testified that for the entire time that he worked at BXTF, his tour was 9:05 p.m. until 6:02 a.m. His tour did not start at 11:05 p.m., which is when the squad sergeants began their tours. The Respondent explained that although the Impact Task Force and BXTF turn out of the same building on Sedgwick Avenue, the two units are separate and distinct. They have separate offices, and personnel from the two units do not work together. They are, however, both overseen by the same Commanding Officer. Until the end of 2006, the Commanding Officer was Captain Tracey.

The Respondent testified that he retired from the Department in 2005. At that time, he had just over 20 years on the job. At the time of his retirement, he had on the books approximately six months of vacation days and 500 hours of compensatory time, which he had earned from working overtime. When he left the Department he waived the compensatory time in addition to his terminal leave. Approximately eight or nine months after retiring, he started the process to rejoin the Department. He explained that he felt he had retired before he was ready, and he wanted to continue with the Department until he was promoted to captain. On January 30, 2006, he returned to work at BXTF. He has subsequently taken and passed the lieutenant's test.

The Respondent explained that he originally wanted to go to another command when he returned, but in a telephone conversation with Tracey, Tracey convinced him that BXTF would be the best place for him. According to the Respondent, Tracey asked him to return to BXTF because he (Tracey) "really need[ed] heavy duty supervisors to start spark plugging [the] cops." The Respondent and Tracey also discussed the availability of overtime. According to the Respondent, Tracey told him, "If you need to come in early, come in early, do operations. If you need to stay, stay. If you, you know,

whatever you feel you need to do to make the productivity go up, I will be more than . . . happy and would say it was authorized.” The Respondent testified that during 2006, he worked overtime all of the time. He explained that on overtime he would do everything “from covering the desk to going on patrol . . . from cleaning halls to prostitution operations.” He further explained that cleaning halls meant going into buildings and removing people that did not belong there. He conducted this enforcement activity throughout the entire borough.

The Respondent testified that in his 23 years of service, he has never worked the day tour. According to the Respondent, Tracey and everybody else who knew him knew that he always worked at night. There were, however, times in 2006 that he worked overtime day tours at the desk. He stated that it was possible that other BXTF supervisors were present on those occasions. He explained that he would work overtime on those occasions because the other supervisors had specific assignments. The Respondent used the youth sergeant as an example. He explained, “[The youth sergeant] is on the roll call. He coordinates all youth related, you know, anything to do with the schools. He has youth meetings. And he actually has to coordinate youth initiatives. There are times he has to go out. There are times he’s got to be at these meetings. He has to do the youth initiatives, and that would be the void.” The Respondent also discussed the roles of the training sergeant and administrative lieutenant. He explained, “[The training sergeant] does lesson plans, he does the precinct level training for us. He also makes sure we get our firearms qualifications and all the training that we get. . . . The administrative lieutenant’s job is a tremendous job. It’s so much. I don’t even know what her job is it’s so in depth.” In 2006, Sergeant Griffa was the youth sergeant,

Sergeant McElroy was the training sergeant, and Lieutenant McGuire was the administrative lieutenant. The Respondent stated that he did not know the names of the impact sergeants. About the impact sergeants, he explained, "There are times that they come in, they sign in, and they went upstairs. Especially in the year 2006. They didn't even fall under our guidelines, you know. Now they fall in our command log where they have to sign in, but back then, they didn't have to sign in there. Or they did have to sign in, but they weren't governed by our patrol log or anything. They had their own paperwork and stuff upstairs." The Respondent testified that there were occasions in 2006 that lieutenants and Tracey observed him working overtime while other supervisors were present. Nobody ever told him that year to stop working overtime.

The Respondent testified that he tried to be as accurate as possible on his overtime slips. A lot of times he wrote "patrol coverage" or "supervisor coverage." According to the Respondent, he used the term patrol coverage prior to 2006, and patrol coverage and supervisor coverage are the same thing. The Respondent would submit his overtime slips to a supervisor in a timely manner. He would put the slips at the desk, and they would be passed on to the ICO. At no point during 2006 did Lieutenant Algarin (the ICO) or anybody else ever tell the Respondent that he was working too much overtime or working unnecessary or unauthorized overtime. None of his overtime slips were rejected for any reason. Not until the initiation of the current case did anybody from the Department question him regarding the amount of overtime that he was accumulating. The Respondent testified that he actually worked all of the overtime that he submitted in 2006, and he has never submitted an overtime slip for work that he did not perform. According to the Respondent, he did not need to seek permission before working

overtime that year, and he did not need to notify any supervisor either during or after working an overtime tour.

When Tracey left BXTF, he was replaced by Captain Traynor. The Respondent testified that at some point in 2007, he had a conversation with Traynor about overtime. According to the Respondent, the conversation might have taken place in Traynor's office, and he did not remember if anybody else was present. The Respondent stated that in the conversation Traynor instructed him to stop doing overtime until further notice. As a result of the conversation, the Respondent immediately stopped doing overtime. It was the first time, according to the Respondent, that anybody in a supervisory position instructed him to alter his overtime. The Respondent testified that a month or two later, Traynor informed him that he could start doing overtime again. According to the Respondent, Traynor told him at that point, "I am looking for proactive enforcement, and if you need to be here, you're here, but I also want you to do your proactive enforcement.

The Respondent testified that he got Traynor's permission to start doing overtime again in April or May 2007. From that point on, he started doing the same kind overtime as before. He explained, "I would be going out, I would do patrol supervisor, I would do the desk, I would free up the youth sergeant. Pretty much the same type of thing." Although the Respondent was still working a 9:05 p.m. by 6:02 a.m. tour, the roll call was not accurate a lot of the time. The Respondent explained that because the roll call personnel were sometimes lazy and typed whatever they wanted, he would have to make ink changes on the roll call. On November 2, 2007, the Respondent became a regular squad sergeant and his tour was changed to 11:05 p.m. by 8:02 a.m. Prior to that date, all of the overtime slips that the Respondent submitted were approved by the Department,

and nobody told him that he was accumulating too much compensatory time. The Respondent could not recall if he continued to accumulate overtime after that date.

The Respondent testified that as in 2006, there were occasions in 2007 that he worked overtime supervisory coverage even though other supervisors were present for duty. He explained that he would do on those occasions whatever it was that the captain needed him to do. He further explained, "If [the captain] needed me to go out there and spark plug the police officers and make arrests, which I have on the day tour, anything that could help, you know, the productivity for the Department, for the Bronx Task Force. And also some administrative duties, like I said, getting clean halls, getting PIN maps, improving our activity." The Respondent testified that there were numerous occasions in 2007 that he worked overtime with Traynor. Nobody ever told him that year to stop working overtime if other supervisors were present.

The Respondent testified that there was generally no supervisory manning between the time his tour ended at 6:02 a.m. and 9:30 a.m., which is when the day tour supervisors arrived. The Respondent would, therefore, often stay at the desk during that period. The Respondent, at Traynor's request, also did overtime in 2007 working on renovations of the command. The Respondent explained that the building flooded and parking conditions were inadequate. The Respondent testified that he worked a lot of days on improving these conditions in the command, but he could not say offhand exactly how many. He stated that he thinks he indicated on the overtime slips for those days that he was doing work on the improvement of the building. All of this overtime was done with Traynor's approval. The Respondent testified that he had to stay at work on the day that there was a blackout in Co-op City. He described the blackout as an event that

required all personnel. He could not recall his specific assignment that day. According to the Respondent, at no point in 2007 did he ever submit an overtime slip for work that he did not actually perform. Other than the one conversation with Traynor, nobody ever instructed the Respondent to stop working overtime.

On cross-examination, the Respondent testified that Tracey approved him to do any overtime that involved "going out doing some type of enforcement, doing some type of coverage." He reiterated that sometimes "supervisory coverage" on his overtime slips meant that he was cleaning halls. He explained that cleaning halls sometimes required him to wait until daytime hours to go to other commands to retrieve affidavits or other materials. The Respondent stated that he should have memorialized this activity in his Activity Log, but he neglected to do so. The Respondent received a Schedule A Command Discipline for the loss of one of his Activity Logs. He could not recall the time period that this lost Activity Log covered. According to the Respondent, all of his other Activity Logs were turned over to Algarin and Lieutenant Medina.

The Respondent reiterated that between January 2006 and November 2007, his tour was 9:05 p.m. by 6:02 a.m. There were, however, days during that period that he came to work early, either because he had adjusted his tour to an earlier start time or he was doing pre-tour overtime. For example, upon review of the January 11, 2007 roll call, the Respondent stated that he adjusted his tour that day to 7:30 p.m. by 4:32 a.m.

The Respondent reiterated that there was sometimes a lapse in coverage between 6:02 a.m. and 9:30 a.m. Although the Respondent's regular tour on September 19, 2006 was scheduled to end at 6:02 a.m., he ended up staying that day until 5:02 p.m. On his overtime slip, the Respondent indicated that the reason for his overtime was supervisory

coverage even though Griffa (the youth sergeant) started his tour that day at 6:00 a.m. and other supervisors started at 9:13 a.m. According to the Patrol Guide, a youth sergeant can perform up to four hours of desk coverage on a given tour. Upon review of the roll call, the Respondent testified that there was no indication that Griffa had any sort of obligation that would have prevented him from covering the desk that morning. The Respondent, nevertheless, testified that he might have stayed at work because Griffa had something to do. The Respondent explained that the roll call does not tell the whole story, just that Griffa was present. The Respondent further explained that he did not recall what he or the other supervisors were doing that day. For example, he might have gone out on an operation or a detail, or he might have covered the desk if the other supervisors had other things to do. Upon review of the roll calls and command log for that day, the Respondent testified, "Apparently, I took the desk and I freed [the other supervisors] up to do their job. . . . Sergeant Phillips is in impact, Harnon is impact, Lieutenant Algarin is the ICO, and Lieutenant McGuire is the admin lieutenant. So with Sergeant Griffa doing his youth duties and leaving Lieutenant Maldanese to be the platoon commander and Sergeant Martinez to be the patrol supervisor, that affords a full compliment of manpower." According to the Respondent, having a supervisor assigned to impact perform coverage in BXTF would have left a void in the impact unit.

The Respondent reiterated that that he worked a lot of days on improving the condition of the building and the parking lot. On his overtime slip for June 13, 2007, the Respondent indicated that the reason for his overtime was cleaning up the parking lot. On his slip for June 20, 2007, the reason for the overtime was fixing a fence, and on his slip for June 26, 2007 the reason for overtime was "coverage and clean up." The

Respondent stated that overtime slips that indicated "supervisory coverage" might have also involved the parking lot clean up, but there was no way for him to be certain.

Upon questioning by the Court, the Respondent reiterated that when he retired in 2005, he waived his terminal leave, approximately 80 days of vacation time, and 500 hours of compensatory time. The Respondent did not know why he waived that time. The Respondent stated that he is responsible for making Activity Log entries that indicate what he does on any given day. Although he noted in his Activity Log that he did overtime as patrol supervisor on October 3, 2006, he did not enumerate any specific activities. On his overtime slip for that day, the Respondent indicated that the reason for the overtime was to supervise coverage and administrative duties. Again, he did not enumerate any specific activities. The Respondent conceded that he should have been more specific on his paperwork.

When asked about his Activity Log entries for October 20, 2006, the Respondent testified that his log "doesn't say much." On an overtime slip for that day, the Respondent indicated that he did supervisor coverage from 10:00 a.m. to 6:00 p.m. The slip does not say specifically what he did during the coverage, but it was noted on the roll call that he was post changed to desk duty during that period. The Respondent stated that often he would make notations on the scratch roll call, and it was the responsibility of the person who took over for him at the desk to "log it in."

On February 1, 2007, the Respondent came to work an hour early and worked 13 hours of overtime. According to the Respondent, he indicated on his overtime slip for that day that he supervised the desk from 10:00 a.m. to 6:00 p.m. and did precinct assignment regarding some possible crime intelligence. He explained that the precinct

assignment may have involved possible gang violence or retaliatory shootings. His Activity Log did not provide any additional information on what he did that day. For the next day, all that the Respondent entered in his Activity Log was that he was assigned to the desk and then post changed to patrol supervisor. Algarin inspected and signed the Respondent's log that day and, according to the Respondent, Algarin scratched the log at least once a month. Upon review of his Activity Log that covered the period from September 26, 2006 through February 27, 2007, the Respondent testified that Algarin scratched the log on October 18, November 10, November 29, and December 7, 2006. Algarin also scratched the log on January 4 and February 2, 2007. According to the Respondent, Algarin would have been looking at the quality of the log entries and never said anything about the entries being inadequate. The Respondent's Activity Log was scratched by supervisors assigned to other commands on October 10, November 7, November 8, and December 22, 2006. It was also scratched by other supervisors on January 3, January 20, and February 19, 2007. The Respondent testified that when supervisors from other commands scratched his log, they were just making sure that he was present at his assignment. Between March 2006 and December 2007, the Respondent went through six Activity Logs. He reiterated that one was lost and he gave the rest to Algarin and Medina. He turned over the Activity Logs in January 2008. [Respondent's Exhibit A is the Respondent's Activity Log for the period from September 26, 2006 through February 27, 2007.]

On redirect examination, the Respondent testified that his lost Activity Log was, in fact, taken from his Department mailbox. He documented this incident in a Complaint

Report and a Department memorandum. He also reported it to the Internal Affairs Bureau.

FINDINGS AND ANALYSIS

While there are numerous documents and several contentious issues in the case the fundamental facts are reasonably simple. The Respondent was the conditions sergeant at the Bronx Task Force. In the period from March 2006 to October 2007 he accumulated very substantial amounts of compensatory overtime. Some of this was the result of working after the conclusion of or before the start of his tour, which is reflected in Specification No. 1, while some is the result of his allegedly changing his tour to an earlier start thereby expanding the overtime at the end of his tour which is reflected in Specification No. 2. The Department's case in these two specifications, in essence, is that the Respondent claimed the reason for his overtime was "supervisory coverage" when other supervisors were available and therefore he should not have taken the overtime.

It is uncontested that every overtime slip was approved by a supervisor, in most instances Lieutenant Algarin, who was the Integrity Control Officer for the command and was authorized to do so. Where tour changes were involved they were also indicated on the overtime form which has boxes for assigned hours as well as hours actually worked. There is no allegation that the Respondent failed to perform work during these overtime periods.

In analyzing these specifications it is necessary to break down the overall time period into smaller spans of time reflecting somewhat different circumstances. The first

time period would be from March 2006 to November 2006, when the commanding officer was Captain Tracey.

The Respondent has recounted a discussion with Captain Tracey in which he claims that Tracey authorized him to perform overtime and that he was given latitude to work this compensatory overtime on his own initiative. Tracey was, because of health reasons, unable to testify. Even if this Court were to reject the Respondent's testimony regarding this conversation the Department has provided no evidence to indicate that Tracey disapproved of the manner in which the Respondent was assigned overtime or that he objected to the amount of overtime the Respondent was assigned. There is no memorandum or note or any other documentation to indicate that the overtime was not authorized or approved by Tracey. No overtime appears to have been rejected.

Specification No. 1 alleges that the Respondent "worked beyond his scheduled tour for non-ordered overtime" while Specification No. 2 says he "did improperly adjust his tour" resulting in compensatory overtime.

There was simply no testimony or other evidence that what the Respondent did was either "improper" or "non-ordered." The authorization and propriety are found in the fact that each slip was approved¹ and there was absolutely no evidence; direct, circumstantial, written or hearsay, that Tracey or Algarin disapproved of what the Respondent did. The Respondent must be found not guilty as to the first time period of these first two specifications.

The second time period is from November of 2006 to mid-February 2007. Captain Traynor was assigned to the command at the start of this period. He indicated

¹ There is one slip included in the package that has no desk officer's signature and no supervisor's signature. It does not appear to be disapproved but merely incomplete.

that at some point in January or February 2007 he had a discussion with Algarin who advised him that the Respondent had accumulated a great deal of overtime. As a result at some point in January or February Traynor spoke to the Respondent and told him that he was not to have more overtime. This order turns out to be something less than absolute as the Respondent did in fact perform overtime during this period that is not contested by the Department. After February 7, 2007 there is only one day of contested overtime until May 3, 2007, thus the third period is between February 7 and May 3, 2007.

With regard to the second period Traynor had just come into command. He indicated that he had no opportunity to speak with his predecessor, Tracey, so he basically came into the command cold. There is no evidence that he changed any of the previous policies until he spoke to the Respondent in January or February 2007. Being nothing was changed from the preceding period until that discussion there is no evidence that the overtime was not authorized, therefore the Respondent must be found not guilty with respect to that period of time from November 2006 to mid-February 2007.

The next period is a little more complicated. It is uncontested that Traynor spoke to the Respondent and told him that he was to have no more overtime. The date in February when the overtime ceased is not inconsistent with Traynor's testimony about when his conversation occurred. The Department contends that the period of this limited overtime extended until June or July 2007 when the Respondent was permitted to again have overtime. The Respondent contends that he was allowed to assign himself overtime again at a time that corresponds to the date in May when he started doing supervisory overtime again. While the exact length of this period is more properly addressed in

conjunction with Specification No. 3, there is no question that Traynor lifted the limit on the Respondent's overtime at some point.

This then brings us to the fourth period which runs from whenever Traynor lifted the limits on the Respondent's overtime until the last date charged, October 24, 2007.

What is significant about this period is that Traynor clearly authorized the Respondent to re-commence taking compensatory overtime. Certainly this act undermines any claim that the Respondent worked overtime in this period without authorization. It also demonstrates, in some measure, that all of the overtime was done with authorization because it assisted the command in meeting its enforcement goals which would seem to be the only reason for Traynor to have re-authorized it. In any event the Respondent can not be found to have acted without authorization during this last period.

It now makes sense to turn to Specification No. 3. This specification charges the Respondent with failing to comply with Captain Traynor's order not to perform overtime. The Specification claims 474 hours of overtime were accumulated in violation of this order and speaks of the period from "January 2007 and/or February 2007 through October 2007."

As noted above at some point well before October 2007 Traynor told the Respondent he could resume performing overtime so the period running through October 2007 is overly broad. In closing argument the Department argued that the period in which he was not to take overtime did not end until the midyear or the summer. But Traynor had no note, memorandum or other documentation to pinpoint the date. In fact on cross-examination he conceded it might have been earlier and that he couldn't "[s]it

here with certainty and say exactly what month it was.” The Respondent argues that date was in fact in May.

Looking at the records it is clear that the Respondent abruptly stopped working supervisory overtime in February 2007 and abruptly re-started it in May 2007. He accumulated significant overtime in May, June and July 2007. In August 2007 he worked supervisory overtime on only one day for five hours and in September 2007 he worked one day of supervisory overtime for 6 hours and 25 minutes. Overtime again resumed in October 2007 at a somewhat slower pace than had been the case in May, June or July 2007.

This pattern would support the notion that Traynor told the Respondent to cease working overtime in February 2007 and that he obeyed. It further supports the notion that he was allowed to work overtime again in May 2007 not only because the overtime picks up then but because his overtime virtually stopped after July at just the time that the Department claimed he was told he could resume it. There is no explanation as to why the overtime dropped precipitously in August and September 2007 but that is not an issue before this Court. On its face the overtime record supports the notion that he stopped working overtime when told to and there is no evidentiary basis on which to find that he re-commenced supervisory overtime before he was authorized to do so.

There is, as noted previously, one date in this February to May 2007 period when the Respondent did supervisory overtime - March 16, 2007. During his testimony this Court asked Traynor to look at the records for that date, (DX 14), and he testified that the documents provided were not sufficient to establish that the overtime was not appropriate, (T – p 194). Further Traynor indicated that it had been his understanding

that the Respondent had complied with his order. The Court must therefore find the Respondent not guilty with regard to Specification No. 3.

Specification No. 4 charges the Respondent with failing to “properly and accurately complete and maintain Department Records, including but not limited to Overtime Slips and Activity Logs.” During her closing argument the Assistant Department Advocate moved to amend this specification. She noted that the dates in the specification go from March 2006 to January 2007 and that what was intended was to have the chargeable period run from March 2006 through October 2007. The Respondent objected noting that the attempted amendment was untimely. Before addressing that issue or the substance of Specification No. 4 it is necessary to go back to Specifications 1 and 2. These specifications also list the dates running from March 2006 to January 2007. The period from January and/or February to October 2007 is covered only in Specification No. 3 which deals with a failure to obey an order. Thus technically there is no charge of inappropriately taking overtime or changing his tours from the period when Traynor rescinded that order, whether that was in May or July 2007 until October 2007. Nevertheless, the assessment of the Court as to what occurred covers that period.

With regard to the Department’s motion to amend Specification No. 4 after the close of evidence indeed after the Respondent’s closing argument the Court will permit the amendment. In the original charges served on November 19, 2008, Specification No. 4 has the same substantive language as the current charge only the time period ran until October 2007 the date the Department now seeks to amend into the charges. It is clear that the Respondent was on notice that the charge covered the period up to that date and the inclusion of the January date was an administrative error. No evidence or argument

was affected by the change and indeed all parties dealt with the issues raised in this specification on the understanding that it ran the full period. The amendment under the circumstances does not create a due process issue.

Specification No. 4 charges that the Respondent "failed to properly and accurately complete and maintain Department Records, including but not limited to Overtime Slips and Activity Logs.

Given the large amount of essentially self-assigned overtime the Respondent certainly had some duty to record what it was he was doing and why it was necessary. The Respondent himself was unable, using his memo book, overtime slips and other documents to account for his activities on specific dates. Indeed given his lack of record keeping it is impossible to do so. This is particularly critical since on all the charged dates the Respondent listed "supervisory coverage" on dates when there were other supervisors available.

According to his testimony his work freed these other supervisors to do other work but there is not a shred of documentation to show what, specifically, he meant. The fact that his supervisors failed to take him to task for this does not relieve him of the responsibility to keep adequate and accurate records.

The top of the back of the overtime form is entitled OVERTIME ANALYSIS REPORT. There are two portions of the back set aside for this report. The first refers to arrest overtime. The next portion, at the middle of the page, is designated OTHER ASSIGNMENTS NECESSITATING OVERTIME. While some of the questions under that heading are directed to specific patrol assignments there are several blank lines following an instruction to "Explain Unusual Delays or Circumstances." None of these

lines are filled out on any of the overtime forms, (it should be noted that there are a few overtime forms where the back is missing).

The Responsibility to complete this portion of the form or to explain in that space or on the front the circumstances and need for the overtime rests with the Respondent and the fact that a supervisor approved the overtime itself does not relieve the Respondent of his responsibility to justify the overtime. Given that he basically assigned the overtime to himself he knew or should have known that it might come into question. This is particularly so because he listed "supervisory coverage" on days when he knew or should have known that other supervisors were available. The Respondent is a sergeant and that carries with it some independent responsibility.

The need for adequate record keeping and explanation is underscored not only by the sheer volume of this form of "supervisory" overtime but by the fact that on many of these days he worked extremely long shifts which would have diminished his capacity for effectiveness and productivity. Indeed sometimes these shifts would follow close to one another.

Explaining why this was appropriate was certainly part of his responsibility. Indeed the Department eliminated from consideration many overtime days where an explanation existed on the slips. However a few of the slips included in the charged dates illustrate that the Respondent understood the issue of the need for documentation and explanation. On January 26, 2007 the Respondent noted that the lack of supervisors was caused by the fact that there were two line-of-duty injuries, a hospitalized prisoner and an RMP accident. While this still does not explain why *he* was needed it provides vastly more detail than a vast majority of the other slips.

On January 30, 2007, he indicated that there was a mobilization due to a water main break. Again there is no clear explanation for why he was actually needed but the slip provides more information than most about the underlying reason for his being there.

On yet another, for December 1, 2006, he explained that no task force supervisors were working, specifically he indicated that there were no lieutenants or sergeants as all of the supervisors had been assigned to an out-of-borough detail. This might have been a full explanation except when one looks at the roll call it appears that while he started his overtime at approximately 0600 the detail did not leave the command until 1245.

In a similar vein the overtime slip for October 19, 2006 explains that he supervised and assisted in an arrest with a hospitalized prisoner except that he performed 18 hours of overtime on a tour that stretched over 27 hours and there were eight other supervisors available. More explanation would seem appropriate.

These notations, which appear on the front of the overtime slips, stand in stark contrast to the others which provide virtually no information and no explanation. The December 1, 2006 notation incidentally indicates that he recognized that lieutenants are also supervisors. This is significant because on a number of days he indicates that no sergeants were available but neglects to address the availability of lieutenants.

Another date where the overtime slip gives some specifics is December 13, 2006. On that date he worked 13 hours and 30 minutes of overtime for a 22 hour 27 minute shift starting at 1830 on December 12 and finishing at 1702 on the December 13. The reason he lists is "6 X 2 + 10 X 6 supv. Coverage only one sgt working no supervising." Yet the roll call lists two lieutenants (besides Algarin) and three sergeants for the second platoon and one lieutenant and five sergeants for the third platoon. Some explanation of

how he came to the conclusion that there were no supervisors would seem appropriate and necessary – not to mention the need to explain why he moved his tour start up approximately two and half hours from 2105 to 1830.

The lack of documentation is further underscored by the Respondent's own testimony. He indicated that one day he was needed because of a power failure at Co-op City. He did not provide the date nor could this Court in reviewing the overtime slips find any that listed that as the cause of overtime. In a similar vein he explained that he worked on cleaning up the station house and the parking lot, yet he conceded on cross-examination that those activities were listed on the overtime slips and those dates were eliminated from the specification by the Department. Indeed the Respondent conceded that he should have been more specific in his paperwork.

The failure to accurately complete and maintain Department records and the resulting absence of documentation and explanation for the overtime is very clear and the Respondent is found guilty of Specification No. 4.

Other Observations

Given the volume of material in this case and the number of issues raised there are some loose ends that should be addressed. During the course of the trial the Department agreed that some of the days listed on their summary sheet, DX 1, should not be part of the specification. Crisalli was allowed to review the exhibit out of Court and crossed off a number of days. A corrected exhibit with dates crossed out was entered into evidence as DX 1A. That necessitated a recalculation of what the approximate number of hours charged are. Below are two charts prepared by the Court. They total the overtime

hours vertically by month and then across those totals horizontally with the grand total for the period on the extreme right.

The first chart covers the period from March 2006 through January 2007 and matches the period covered in Specification Nos. 1, 2 and 4. The total for this period is approximately 950 hours and that reflects a total of the number of hours for Specification Nos. 1 and 2 and is a reduction from the 1375 hours in the amended charges on which the trial commenced.

Mar-06	Apr-06	May-06	Jun-06	Jul-06	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06	Jan-07	
4:00	8:33	8:57	6:30	10:00	12:30	6:05	7:00	7:20	12:00	4:00	
3:33	2:00	3:52	13:30	12:30	12:05	13:00	11:20	12:30	6:05	4:05	
7:33	5:33	9:03	12:57	12:05		12:00	18:00	6:40	13:05	12:30	
6:10	9:03	9:03	6:57	12:05		10:00	4:00	10:00	7:05	13:00	
2:33	8:58	5:03	8:03	3:00		12:00	6:05		13:30	8:00	
4:33	10:00	9:57	9:03	13:00		11:00			10:30	12:00	
3:30	9:00	9:00	7:27			5:05			5:50	13:00	
4:33	9:00	3:00	11:57			9:00			13:30	14:00	
8:33	3:00	7:30	6:00			12:00			10:08	13:00	
6:33	7:35	10:00	5:00						9:05	12:05	
8:33	7:33	7:00	23:00						12:05	10:00	
	2:03	10:30	12:00							2:05	
	5:00	8:57								7:00	
		3:00								13:00	
										14:30	
										13:00	
										13:00	
										13:00	
										13:00	
60:04:00	87:18:00	104:52:00	122:24:00	62:40:00	24:35:00	90:10:00	46:25:00	36:30:00	112:53:00	204:15:00	952:06:00

The second chart covers the period from February 2007 to October 2007. This chart is instructive in showing the distribution of overtime which is discussed in reference to the findings regarding Specification No. 3, (the sixth entry for February is for 12 hours and occurred on February 7).

Feb-07	Mar-07	Apr-07	May-07	Jun-07	Jul-07	Aug-07	Sep-07	Oct-07	
13:00	6:05		4:05	7:00	6:10	5:00	6:25	9:33	
13:00			5:32	0:35	6:45			4:05	
12:00			5:15	6:05	6:15			3:05	
10:00			5:20	1:30	4:05			4:35	
11:30			5:35	5:05	6:00			1:00	
12:00			2:05	6:05	10:05			4:35	
			1:05	6:05	9:05			0:35	
			13:05	6:05	6:00			4:50	
			5:52	8:55	6:00				
			2:00	6:00	5:00				
			1:00	6:35	6:00				
			3:05	6:05					
			5:15	6:35					
			6:50						
71:30:00	6:05:00	0:00:00	66:04:00	72:40:00	71:25:00	5:00:00	6:25:00	32:18:00	331:27:00

There was also an issue raised about the fact that there was no testimony from Algarin. The Respondent has asked the Court to find him to be a “missing witness” and draw an adverse inference. The Court was informed that Algarin was in Florida and unavailable to the Department. It is not clear what effort was made to produce Algarin for trial or to arrange for his testimony telephonically or by video. At the same time it is hard to determine what adverse inference could be drawn that would be worse for the Department than what testimony and documentary evidence indicate. Algarin approved almost all of the overtime slips and he would be expected to testify that he did so because he believed that the overtime and related tour changes were appropriate.

In this regard it is worth noting that on the back of the overtime slips, at the bottom of the page, is a space for the Desk Officer’s Endorsement. That box calls for that officer to make a recommendation of approval or disapproval. It also contains a caption “If excessive explain below” followed by three “yes” or “no” questions. Two of those questions might have been relevant to the Respondent’s situation, they are: “Was

the time UNREASONABLE for type of job?” and “Could this overtime have been avoided?” A “yes” answer to either of these questions would have required an explanation.

A review of the overtime sheets indicates that on many of them this box is not filled out however on most the approval is noted and the answer “No” is circled for those two questions. While the Respondent appears to have “self-approved” several of these, most are signed by other sergeants in the command. This would indicate that at the time the overtime was performed it was believed to be reasonable and unavoidable.

With the wisdom of hindsight those judgments would probably not be the same. Indeed the standard used by Crisalli and Traynor in their testimony at trial, that no supervision was needed if there were other supervisors available, is apparently different than that used in the command at the time the compensatory overtime was approved.

This leaves one other issue and that is the Respondent’s own responsibility in regard to his compensatory overtime. Surely the Respondent realized he was amassing vast amounts of compensatory overtime. Some analysis is necessary to determine what responsibility he might have to reduce or limit his accumulated compensatory overtime.

The best method it seems for addressing the issue of intent of the parties is found in how the Respondent carried out the overtime. The Respondent’s regular tour was at or about the time of the First Platoon roughly from eleven in the evening to eight in the morning.² Almost all of the overtime carried him to the day tour and often put him at the desk. In short, as his attorney has argued, he was quite visibly present. Traynor acknowledges seeing him on the day tour. If the Respondent had accumulated this

² There was some quibbling about whether the Respondent really worked the First Platoon as claimed in Specification No. 1. The roll calls clearly indicate that sometimes he did and sometimes his scheduled tour was earlier.

overtime in some furtive manner there might be some indication that he was doing so wrongfully or that he was failing to exercise supervisory control over himself. But in this case everyone in supervision apparently knew full well that he was working significant amounts of overtime. This was, if nothing else, a signal to him that what he was doing was acceptable to them.

PENALTY

In order to determine the appropriate penalties, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 21, 1985. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.


The Respondent has been found guilty of one specification involving his failure to properly and accurately complete and maintain Department Records, including but not limited to Overtime Slips and Activity Logs.

There is no question that the Respondent was or should have been aware that he was accumulating very large amounts of compensatory overtime. He also was or should have been aware that he was not providing a full record of why this overtime was necessary or appropriate, indeed he could not even account for the specific nature of his overtime activities on the days charged. He also should have been aware that documentation was extraordinarily important particularly since he was basically assigning this overtime to himself and that the reason listed was "supervisory coverage" on days when there were other supervisors available. The magnitude of this failure to

provide adequate documentation is evinced by the large number of days involved and the number of hours accumulated.

Given the scope of the problem created by this failure of record keeping this Court recommends that the Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the Force at the Police Commissioner's discretion and may be terminated at any time without further hearing. I further recommend that he be suspended for 30 days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner-Trials


APPROVED
DEC 11 2008
RAYMOND W. KELLY
POLICE COMMISSIONER
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POLICE COMMISSIONER